



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Paul Krutko

**SUBJECT:** Delegation of Authority to the  
City Manager to Conduct a TEFRA Hearing  
For Bond Financing to Benefit  
SunPower

**DATE:** October 5, 2010

Approved

Date

10/11/10

**COUNCIL DISTRICT:** #4  
**SNI AREA:** NA

## RECOMMENDATION

Adopt a resolution delegating to the City Manager the authority to conduct a Tax Equity and Equality Act ("TEFRA") hearing related to the revenue bonds proposed to be issued by the California Enterprise Development Authority to benefit SunPower Corporation and/or a related entity.

## OUTCOME

SunPower Corporation is pursuing a new San Jose location for a major expansion to accommodate the company's headquarters. Success in obtaining the bond financing will facilitate this important expansion project to move forward in San Jose.

## BACKGROUND

SunPower is a highly recognized global manufacturer of solar panels. SunPower leads the world in the development of high efficiency solar panels. The company has incubated and grown successfully in San Jose and seeks to continue to grow in San Jose. SunPower is pursuing an expanded presence and Headquarters location within the City. In order to facilitate the company's expansion, SunPower has submitted an application to the California Enterprise Development Authority (the "Authority") requesting the Authority's issuance of its revenue bonds in an aggregate principal amount not to exceed \$30,000,000. The actions to be taken by the City in connection with the proposed issuance of the Authority's bonds are described below.

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### **ANALYSIS**

SunPower Corporation is pursuing a major company expansion and new headquarters facility within San Jose. The Corporation is interested in occupying a total of 185,704 square feet of space located at 51, 77, and 145 Rio Robles Drive in San Jose. In order to facilitate the Corporation's expansion, SunPower has submitted and the California Enterprise Development Authority ("the Authority") has accepted an application requesting the Authority to issue revenue bonds in an amount not to exceed \$30,000,000 for the benefit of SunPower and/or a related entity. The proceeds will be used to finance the cost of improving, rehabilitating, and equipping the three buildings on Rio Robles. The funds can also be used to pay capitalized interest, fund a reserve fund for the bonds, pay credit enhancement and associated costs of issuance.

Per the requirements of the Internal Revenue Code, the issuance of bonds must be approved by the appropriate governmental body on behalf of which the bonds are issued and a governmental unit having jurisdiction over the territorial limits in which the facilities are located. SunPower's proposed facilities are located within the territorial limits of the City of San José. Accordingly, the City Council is the appropriate body to approve the proposed issuance of the Authority's revenue bonds.

Pursuant to the Internal Revenue Code, a public hearing ("TEFRA" hearing) must precede the approval of the bonds. The public hearing must have a reasonable public notice period; in this instance a 14 day notice period is required. In order to meet the financing deadline, the hearing must be held no later than October 18, 2010. The City Council does not meet in a timeframe that will allow the 14 day notice period to occur prior to the October 18 deadline. As a result staff is recommending that the City Council delegate responsibility for the conduct of the public hearing to the City Manager and the City Manager's duly appointed designee. The hearing is scheduled to take place at 11:00 a.m. on Monday, October 18, 2010 in Room 1753. The Authority has arranged for publication of the required notice in the Mercury News on October 4, 2010.

The City Council's consideration of approval of the Authority's issuance of its revenue bonds will be on the Council's October 19 agenda.

### **EVALUATION AND FOLLOW-UP**

The City Manager will forward a report of the public hearing to the City Council in connection with its consideration of the approval of the Authority's issuance of the bonds to finance the improvements to SunPower's proposed facilities in San José.

### **PUBLIC OUTREACH/INTEREST**



**Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.

**(Required: Website Posting)**

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- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The proposed action does not trigger any of the described criteria. This memorandum and the associated resolution have been placed on the City's web page. In order to meet the time lines specified by the Authority's deadlines, the City's sunshine requirements have been waived for Council hearing of this item.

### COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office, the Finance Department, and the Department of Planning, Building and Code Enforcement.

### COST SUMMARY/IMPLICATIONS

There is no fiscal impact to the City. The City of San Jose does not bear any responsibility for any bonds to be issued, the debt service on the bonds or any other matter related to the bonds.

### CEQA

CEQA: Not a project, PP10068.



PAUL KRUTKO  
Chief Development Officer

For questions please contact Nanci Klein, Division Manager, at (9408) 507-0430.